

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Monroe D. Kiar, Town Attorney (954) 584-9770

SUBJECT: Ordinance

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA DECLARING A SIX MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS AND ON THE ISSUANCE OF PERMITS AND APPROVALS FOR THE CONSTRUCTION OF WIRELESS TELECOMMUNICATIONS TOWERS; PROVIDING FOR EXCEPTIONS; SETTING FORTH EXPIRATION AND EFFECTIVE DATES.

REPORT IN BRIEF: The Town adopted Ordinance Number 97-16 on March 16, 1997 implementing regulations regarding locations and criteria for commercial communication towers. Since that time, technological innovation and demand for such facilities has necessitated the need to revisit the Town's regulation. Further, good planning and concerns for the quality of life in the Town of Davie dictate a further review of locational criteria and associated standards concerned with the installation of such facilities. Section 2(b), Article VIII of the Florida Constitution and Section 166.021, Florida Statutes, authorizes and requires the Town of Davie to protect the public health, safety and welfare, and gives it the authority to exercise any power for a governmental purpose except when expressly prohibited by law. Section 163.3202 of the Florida Statutes gives authority to the Town of Davie to enact land development regulations consistent with its adoptive comprehensive plan. The Telecommunications Act of 1996 gives local governments authority over the placement, construction and modification of wireless communications towers and the Town is cognizant of the needs for modern communications and for effective competition in the field and also, that the Town residents receive adequate wireless telecommunications services provided that the facilities are designed and located to minimize safety and aesthetic concerns. The Town staff requires a reasonable period of time to address the technical aspects of the telecommunications industry as they impact land use decisions so that the Town Council can properly plan for and implement an efficient cost effective wireless communications services network that meets national and local goals and legislative mandates. Accordingly, in July, 2001 this matter initially came before the Council which approved a Telecommunication Towers Moratorium. Thereafter, the Town Council approved an Addendum to the then existing six month moratorium. Staff has indicated that it requires additional time to address the telecommunications issues and therefore, the attached Ordinance has been prepared for a six month moratorium concerning telecommunication towers. The new Ordinance takes the language of the previous moratorium and adds in the language on the Addendum to the moratorium.

PREVIOUS ACTIONS: In July, 2001, the Town Council approved the prior telecommunication towers moratorium and at a subsequent Town Council Meeting, approved an addendum thereto.

CONCURRENCES: N/A

FISCAL IMPACT: None

RECOMMENDATIONS: Motion to approve Ordinance

ATTACHMENTS: Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA DECLARING A SIX MONTH MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS AND ON THE ISSUANCE OF PERMITS AND APPROVALS FOR THE CONSTRUCTION OF WIRELESS TELECOMMUNICATIONS TOWERS; PROVIDING FOR EXCEPTIONS; SETTING FORTH EXPIRATION AND EFFECTIVE DATES.

WHEREAS, pursuant to Section 2(b), Article VIII, of the Florida Constitution, and §166.021, Florida Statutes, Town of Davie is authorized and required to protect the public health, safety, and welfare and may exercise any power for a governmental purpose except when expressly prohibited by law, and, pursuant to this authority and §163.3202, Florida Statutes, Town of Davie has enacted land development regulations, consistent with its adopted comprehensive plan, which protect the quality of life in the Town;

WHEREAS, the Town adopted Ordinance Number 97-16 on March 19, 1997, implementing regulations regarding locations and criteria for commercial communication towers; and

WHEREAS, since that time, technological innovation has been explosive; and demand for such facilities has necessitated the need to revisit potential deficiencies in the Town's regulations; and

WHEREAS, good land planning and concern for the quality of life in the Town of Davie dictate a further review of locational criteria and associated standards concerned with the installation of such facilities; and

WHEREAS, the Telecommunications Act of 1996 makes it clear that, as long as local zoning requirements satisfy certain conditions as codified within the Act, the authority of local governments over the placement, construction and modification of wireless telecommunications towers ("towers") is neither limited nor effected; and

WHEREAS, the Town is cognizant of the need for modern communications and for effective competition in the field and also desires that the Town residents receive adequate wireless telecommunications services, provided that the facilities are designed and located to minimize safety and aesthetic concerns; and

WHEREAS, industry and governmental agencies that have studied current technology have established that towers can be designed and installed in ways that will minimize safety and aesthetic concerns; and

WHEREAS, these design and installation methods need improvement in the Town Code; and

WHEREAS, the Town staff requires a reasonable time period to address the technical aspects of the telecommunications industry as they impact land use decisions so that the Town Council can

properly plan for and implement an efficient and cost-effective wireless communications services network that meets national and local goals and legislative mandate; and

WHEREAS, the Town has determined that there are differences between the visual aesthetic and safety concerns relating to the installation of new telecommunication towers and those relating to the placement of telecommunication antennas on existing towers (i.e. co-locations), and that such differences establish a rational basis for exempting co-locations from the moratorium; and

WHEREAS, the Town has also determined that it will be in the public interest and not inconsistent with the purposes of the moratorium to allow continued placement of wireless telecommunication antennas on existing wireless telecommunication towers during the moratorium; and

WHEREAS, case law has held that six months is a reasonable period of time under the Act for the Town to place a moratorium on the issuance of special use permits for wireless communications facilities, *Nat'l Telecomm. Advisors v. Town of Stockbridge*, 27 F. Supp. 2d 284 (D. Mass. 1998).

WHEREAS, in view of the foregoing, a situation exists which requires an immediate moratorium on commercial communication towers; and

WHEREAS, this moratorium will be of temporary impact to real properties within the Town; and

WHEREAS, this moratorium is being enacted in good faith, without unjust discrimination, in reliance upon the decision of *Sprint Spectrum, L.P. v. City of Medina*, 924 F. Supp. 1036 (W.D. Wash. 1996), and *Nat'l Telecomm. Advisors v. Town of West Stockbridge*, 27 F. Supp. 2d 284 (D. Mass. 1998), and is of the minimum feasible duration;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA, that:

SECTION 1. This Ordinance is hereby adopted and shall take effect immediately upon its passage and shall continue for a period of six (6) months from the date of adoption, unless terminated earlier or extended by subsequent action of the Town Council.

SECTION 2. The following applications may be considered exemptions to this Ordinance:

Any complete application for a tower which was on file prior to the first reading of the Ordinance and which is subsequently determined by the Town Council to meet all applicable requirements on the Land Development Code;

Any tower which is determined by the Town Council to be necessary to any governmental utilities or emergency communications system.

Any application for the placement of wireless telecommunication antenna on an existing tower, provided that placement of such antenna on the tower is otherwise in compliance with all applicable provisions of the Town of Davie Code of Ordinances.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are suspended during

SECTION 3. All ordinances or parts of ordinances in conflict herewith are suspended during the time period set forth in Section 1 above.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, then such portion shall be deemed a separate, distinct, and independent provision and such holding shall not effect the validity of the remaining portions of this Ordinance.

SECTION 5. This Ordinance shall take effect upon its passage and adoption.

PASSED ON FIRST READING THIS _____ day of _____, 2002

PASSED ON SECOND READING THIS _____ day of _____, 2002

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2002